

conversations with Ms. Marshall with respect to the March 15 Letter focused on gathering information regarding the period commencing February 1989. (M. Bramlett Depn. at 64-71.) By the time Mr. Bramlett received and read a copy of the March 15 Letter he had hashed and rehashed the subject matter thereof with Ms. Marshall over the telephone and he was already gathering information, pursuant to her instructions, toward the preparation of a response. (Id.)

35. DBI responded to the March 15 Letter by letter dated April 18, 1991, with attachments, from Ms. Marshall to Mr. Wolfe (the "April 18 Response"). The April 18 Response included Ms. Marshall's cover letter and a six-page Supplemental Report (the "Supplemental Report") to which there were attached Exhibit A (a one-page Statement dated April 18, 1991, signed by Mr. Bramlett (the "Statement")), Exhibit B (a letter dated April 8, 1991, from Nathan W. Tate, Sr. to Mr. Bramlett) and Exhibit C (a letter dated April 7, 1991, from Hundley Batts to Mr. Bramlett). (Admissions Request, Attachment F.)

36. The Supplemental Report is divided into two basic parts. The first part (pages 1-3) consists of an introduction and a summary of the information set forth in the July 28 Response (i.e., the Opposition), preceded by the following statement:

In response to the instant request, the licensee has reviewed the stations' records and determined that it has nothing more to add. All of the information which is available for the 1982 through February 1989 period concerning the

stations' EEO efforts was supplied in its July 28 response.

The first part of the Supplemental Report concludes with the following paragraph on page 3:

As a result of their contact with these recruitment sources, from 1982 through February 1989, the stations hired approximately 20 new employees of which 7, or 35%, were African-Americans. Therefore, the stations' efforts were very successful despite the fact that there are only 7.4% African-Americans in the local labor force. [Footnotes omitted.]^{10/}

The second part of the Supplemental Report (pages 4-6) provides new information concerning the Stations' recruitment efforts and minority and non-minority hiring record with respect to the period commencing February 1989. (Admissions Request, Attachment F.) The new information consists of a description of the Stations' eight hires since February 1989, including two Black males and one Black female, along with the number of minority and non-minority referrals, the referral sources and the job classification for each position. (Id.)

37. The Supplemental Report was prepared by Ms. Marshall based upon her review of the Opposition and information supplied by Mr. Bramlett. (Marshall Depn. at 44-45; M. Bramlett Depn. at 68.) The Supplemental Report was reviewed by Mr. Van Horn before

^{10/} The HDO at paragraph 9 incorrectly states that DBI "reiterated" in this paragraph on page 3 of the Supplemental Report that "seven (35%) of approximately 20 new employees were Black." In fact, this was the first time DBI made this representation.

it was sent to Mr. Bramlett for his review. (Van Horn Depn. at 48-49; Marshall Depn. at 74.)

38. The Statement in the Supplemental Report that there was "nothing more to add" was based upon Ms. Marshall's understanding of the facts, as set forth in paragraph 33 above. The above-quoted paragraph on page 3 of the Supplemental Report was added by Ms. Marshall with the intention of summarizing the preceding two pages of the Supplemental Report and pertinent portions of the Opposition. (Paragraph 36, supra.) Ms. Marshall did not discuss this paragraph with Mr. Bramlett. The statement that there were "approximately 20" new employees during the License Period was based upon the statements in the Opposition that there were 12 new hires in the Reporting Year and seven minority hires in the balance of the License Period. Ms. Marshall understood that the information set forth in the Opposition represented all the information available for the License Period. While the total number of hires discussed in the Opposition equaled 19, Ms. Marshall wrote "approximately 20" to account for the fact that DBI did not have complete records and that some of the information in the Opposition was based on memory. (Marshall Depn. at 47.)

39. Ms. Marshall never doubted the accuracy of the statement that there had been approximately 20 new employees during the License Period. In her words:

I didn't question the number 20, as I said before, because I pictured this as a small station, as a Mom and Pop organization, and as a very stable

organization where few people came and left. And even if it was a larger organization, I listen to WMAL, Harden and Weaver, every morning and those two people have been there for 20 or 30 years and nobody has left. They're the same engineers -- and I have never visited radio stations, and the fact that there were only 20 people that they hired during that seven year period didn't strike me as being unusual and I never questioned it in my own mind. I never questioned Mr. Bramlett about it.

(Id. at 75-76, 47-48.) Mr. Van Horn had a similar understanding of the nature of the Stations and the size and stability of its staff. He had no reason to doubt the accuracy of the number of hires. (Van Horn Depn. at 44-45, 51-53.)

40. Mr. Bramlett confirms that the paragraph on page 3 of the Supplemental Report was prepared by Ms. Marshall and not discussed with him. Mr. Bramlett did not provide Ms. Marshall with this information. (M. Bramlett Depn. at 123-124, 138.) In Mr. Bramlett's words:

I would never purport to anybody in the radio business that you hire 12 people in one year and 7 minorities in the previous six in Decatur, Alabama, at a country radio station or any radio station. You just--I would never purport to do that or try to get anybody to believe that.

(Id. at 138.)

41. Mr. Bramlett's Statement attached to the Supplemental Report reads in pertinent part:

I have read the foregoing Supplemental Report relative to the employment practices of Stations WHOS and WDRM and have determined that, to the best of my knowledge and belief, all of the facts contained therein concerning the employment record and affirmative action efforts of WHOS and WDRM were gathered and supplied by me and my staff and are accurate and complete.

Mr. Bramlett acknowledges having read the Supplemental Report and signing the Statement. In reading the Supplemental Report, however, he did not focus on the information on pages 2 and 3, which purported to summarize facts previously supplied in the Opposition; he focused on the new facts he provided which were set forth in pages 4 through 6. He "totally missed" the representation on page 3 that there had been approximately 20 new employees during the License Period. (M. Bramlett Depn. at 123-126, 134-135, 138.) Ms. Marshall confirms that, in reviewing the draft of the Supplemental Report with Mr. Bramlett, she focused specifically on the new facts set forth in pages 4 through 6 and did not discuss the materials preceding those pages, which represented her attempt to summarize the information set forth in the Opposition. (Marshall Depn. at 51, 54.)

42. The next communication between the FCC and DBI took place on or about October 7, 1991, when Ms. Cooper telephoned Ms. Marshall. (HDO at paragraph 10.) Ms. Marshall recalls that Ms. Cooper, in a brief conversation, questioned the variation in the Stations' hiring rate, noting that for the Reporting Year there were 12 hires and that this was more than other years either before or after. (Id. at 55-57.) After her conversation with Ms. Cooper, Ms. Marshall telephoned Mr. Bramlett. She recalls telling Mr. Bramlett that Ms. Cooper had questioned why there was a variation in hiring rates, comparing the 12 new hires in the Reporting Year to a lesser number on either side of that time period. Mr. Bramlett explained that the turnover rate at radio

stations varied from year to year. During this short conversation, Ms. Marshall focused on the variation in turnover rate; she did not focus at all on the number 20 because she had no doubt as to its accuracy. (Id. at 55-60.)

43. According to Mr. Bramlett's recollection of his conversation with Ms. Marshall in October 1991, Ms. Marshall simply asked him how there could be a difference in the 12 hires in the Reporting Year and the eight in the year and a half thereafter. Mr. Bramlett answered that employee turnover is different from one year to another. (M. Bramlett Depn. at 72-73.) He was perplexed as to why Ms. Cooper had asked such a question, but in his mind it did relate to the one-year period addressed in the March 15 Letter and the new information for the period commencing February 1989 supplied in the April 18 Response. Mr. Bramlett recalls that there was only one call from Ms. Marshall and that she asked only that one question. His response did not require a lot of concentration. (Id. at 73, 76-77.) In this conversation, Ms. Marshall never mentioned the number 20 and never discussed the total hires over the License Period. (Id. at 119-122.) When Mr. Bramlett received the draft Statement prepared by Ms. Marshall on October 10, he read it and signed it. (Id. at 74.) Mr. Bramlett believed that the October 10 statement was accurate and responsive to the FCC's request. (Id. at 87.)

44. By letter dated October 15, 1991, from Ms. Marshall to Ms. Cooper (the "October 15 Response"), including a three-page Statement dated October 10, 1991, signed by Mr. Bramlett (the

"October 10 Statement"), DBI responded to Ms. Cooper's informal telephonic inquiry. (Admissions Request, Attachment G; M. Bramlett Depn. at 72.) At paragraph 3 of the October 10 Statement, Ms. Cooper's informal request is described as follows:

Ms. Cooper has requested information concerning the number of new hires at the stations during the period 1982 through 1989 and thereafter. Specifically, Ms. Cooper is questioning why so few new hires (20) were reported for that seven-year period when the stations had as many as eight, almost one-half that number, job openings during the 15-month period from February 1989 through mid-April 1991, alone.

DBI's response to this request is set forth at paragraph 4 of the October 10 Statement, as follows:

In response to this request, the stations' staff has again reviewed the stations' records and determined that there is nothing more to add. All of the information which is available for the 1982 through April 1991 period concerning the stations' EEO efforts has been provided to the Commission in various filings, including the licensee's July 28, 1989 response to the FCC's earlier request for EEO information and the licensee's April 18, 1991 Supplement thereto. The stations' staff has determined that the variation in the number of available vacancies during the years under scrutiny can only be attributed to the turnover rate at radio broadcast stations which often varies from year to year.

45. In hindsight, it is clear to Mr. Bramlett that paragraph 3 of the October 10 Statement assumes DBI had previously reported there were 20 new hires during the License Period. (M. Bramlett Depn. at 77.) Mr. Bramlett had not discussed that point in his conversation with Ms. Marshall earlier that day. He is sure he read the Statement, but he did not concentrate and just missed that point. As a rule, Mr. Bramlett did not pick

apart or question statements prepared by his attorneys for his signature. Mr. Bramlett admits he made a "terrible mistake"-- "the biggest mistake of my career." (Id. at 74-76, 124.) Mr. Bramlett's focus from the time of his receipt of the Petition to Deny until December 1991 was the Stations' EEO efforts and minority hiring, not the total number of hires. (Id. at 80-81, 128-129.) Mr. Bramlett testified he would never try to convince anyone, and no one familiar with the broadcasting industry would believe, that the Stations had 12 non-minority hires in one year and seven minority hires and no non-minority hires in the balance of the License Period. (Id. at 74, 76.)

46. The "stations' staff" referred to in paragraph 4 of the October 10 Statement meant Mr. Bramlett. Mr. Bramlett believed, as stated in paragraph 4, that all the information available for the License Period with respect to the Stations' EEO efforts had already been provided to the FCC. By "EEO efforts" he meant minority hires and efforts to recruit minorities. (Id. at 79-82, 130.) Mr. Bramlett understood that "the years under scrutiny" in the final sentence of paragraph 4 of the October 10 Statement referred to the years 1988 through 1991, encompassing the Reporting Year and the multiple-month period thereafter. (Id. at 82.)

47. The facts set forth in the October 10 Statement were consistent with Ms. Marshall's understanding at the time. She did not question the accuracy of the representation that there were 20 new hires during the License Period. She therefore did

not question Mr. Bramlett about that fact in connection with the preparation of the October 10 Statement. (Marshall Depn. at 57, 64, 75.) Ms. Marshall showed the Statement to Mr. Van Horn before she sent it to Mr. Bramlett. Mr. Van Horn made no substantive edits. (Marshall Depn. at 74; Van Horn Depn. at 55-56.)

48. Between November 15, 1991, and mid-December 1991, there were a series of telephone calls between Ms. Marshall and Ms. Cooper and, on one occasion, Mr. Wolfe. (HDO at paragraph 11; Marshall Depn. at 61-62.) The purpose of the conversations was to clarify the number of total hires during the License Period. Ms. Cooper had concluded, based on her review of the Stations' Annual Employment Reports, that the number of hires during such period must have been more than 20. At first, Ms. Marshall did not agree with Ms. Cooper's analysis. Ms. Marshall did her own analysis of the Annual Employment Reports and arrived at a total of 20 new hires for the period.^{11/} After follow-up clarifying conversations with Ms. Cooper, Ms. Marshall came to agree with Ms. Cooper's analysis and concurred that there must have been at least 32 new hires during the License Period. Ms. Marshall so advised Mr. Bramlett, probably in mid-December 1991. Because she understood that the information previously provided to the

^{11/} The number "20" keeps cropping up. It was represented that there were "approximately" 20 new hires during the License Period based upon Ms. Marshall's adding the 12 new hires during the Reporting Year to the 7 hires for the balance of the License Period; then there were the 20 hires based upon the 12 new hires for the Reporting Year plus the 8 new hires for the post February 1989 period.

Commission was based upon all available documents, Ms. Marshall asked Mr. Bramlett to have his staff members search their collective recollection to see whether they could remember additional hires, and related recruitment information, during the License Period. (Marshall Depn. at 61-62, 64, 80-81.) When asked about Mr. Bramlett's reaction to her request, she testified:

I remember a conversation now that kind of stuck in my head because I thought it was odd at the time, but I didn't pay any attention to it at the time, was that he made a strange comment to the effect of, 'Oh, you mean now I have to do more than one year,' or 'go back beyond a year,' or something to that effect. And I remember thinking it was odd, but I didn't pay any attention to it at the time and I was just focused with him on having him see if he could remember an additional number of employees.

(Id. at 62-63, 80-81.)

49. It was not until December 1991, as a result of his conversation with Ms. Marshall, that Mr. Bramlett understood the FCC wanted information about the total number of hires at the Stations during the License Period. The FCC had not as yet requested such information in writing and Mr. Bramlett did not realize that DBI had made representations about the total number of hires in the April 18 Response and the October 15 Response. Prior to December, 1991, Mr. Bramlett had been preoccupied with demonstrating the Stations' EEO efforts and its minority hires; countering what he believed was a discrimination charge. (M. Bramlett Depn. at 83, 86-90, 128-129.)

50. Sometime prior to the holidays in December 1991, Mr. Bramlett gathered, pursuant to Ms. Marshall's instructions and based solely upon his and his wife's recollections, hiring and recruitment information with respect to an additional 17 hires during the License Period. He transmitted this information to Ms. Marshall. Mr. Bramlett's focus in this initial search was on additional hires with respect to whom they could also recall recruitment information, such as source, number and racial breakdown of interviewees. (Id. at 86, 88.) Mr. and Mrs. Bramlett did not work on this matter during the holidays. After the holidays, when Mr. Bramlett refocused on this task, he decided he needed to review payroll records, not just rely on memory, to do the search properly. (Id. at 88-89, 131-132.) He directed his wife to search for payroll records for the period prior to 1988, although he believed the payroll records had been lost or destroyed as a result of previous studio moves.^{12/} (Id. at 89-90; B. Bramlett Depn. at 16-21.) Payroll records for 1988 were available on the Stations' computer. (M. Bramlett Depn. at 83-85.) Mr. Bramlett had not looked for payroll records before this

^{12/} When Mr. Bramlett first thought about old payroll records in December 1991, he believed all such records had been thrown away when the upstairs storage place in the building where the Stations' studios were previously located had been cleaned out in early to mid 1988. At that time, three one-and-a-half ton truckloads of material were taken to the dump. He had shown his son and one of his son's friends, who were involved in the clean-up, what he wanted saved, but they became aggressive in their work and threw away a lot of things Mr. Bramlett intended for them to keep. It was in that context he thought all the records were probably gone. (M. Bramlett Depn. at 89-90.)

time because he did not think he needed them. His focus had been on recruitment and minority hiring information and the payroll records contained no such information. In connection with the preparation of the Opposition, Mr. Bramlett had searched and found all available EEO-related records, particularly with respect to the period from 1986 to 1988. (Id. at 92-95, 132.)

51. By letter dated January 2, 1992 from Mr. Wolfe to Mr. Bramlett (the "January 2 Letter"), Mr. Wolfe summarized the prior communications between the FCC and DBI through the October 15 Response, and then stated as follows:

Upon review of the stations' Annual Employment Reports during the license term and your inquiry responses we determined that the number of hires occurring during this period must have been greater than 20 just to account for the changes in staff size and composition from 1982 through 1988. Ms. Cooper therefore again spoke with your attorney concerning the number of hires that you reported at the station during the license term and requested an explanation for the above-noted discrepancy.

(Admissions Request, Attachment H.) Mr. Bramlett received the January 2 Letter sometime prior to January 8, 1992, the initial deadline for responding to the FCC's telephonic request, as memorialized in the January 2 Letter. (M. Bramlett Depn. at 83-84.)

52. Early on January 8, just prior to the time DBI's response to the January 2 Letter, disclosing 17 additional hires, was to be filed, Mr. Bramlett telephoned Ms. Marshall and told her that payroll records had been located which he believed could clarify the total number of hires during the License Period.

After consultation with Mr. Van Horn, Ms. Marshall called Mr. Bramlett back and directed him to review the records and provide her with accurate and complete hiring information as soon as possible for submission to the FCC. Ms. Marshall then called Ms. Cooper and requested an extension of time within which to respond to the January 2 Letter. It was agreed that the response would be filed by January 13. In the interim, Mr. and Mrs. Bramlett reviewed the payroll records and prepared and telecopied to Ms. Marshall information with respect to the hiring of 83 employees and 57 non-employees. (M. Bramlett Depn. at 83-85, 88-89, 97-98, 131-132; Marshall Depn. at 82-84; Van Horn Depn. at 68-69; B. Bramlett Depn. at 21-22.)

53. At some point after the discovery of the payroll records and before the filing of DBI's response to the January 2 Letter, Mr. Bramlett and Mr. Van Horn spoke by telephone. Mr. Van Horn told Mr. Bramlett that the disclosure of the discovery of payroll records and the existence of a substantial number of additional hires would probably have a serious negative impact on DBI. Mr. Bramlett was aware that disclosure of this information could result in the designation of the Renewal Applications for hearing. Nonetheless, there was never any consideration given by Mr. Bramlett, Ms. Marshall or Mr. Van Horn to not disclosing the newly discovered information. (M. Bramlett Depn. at 83-85, 92, 131; Marshall Depn. at 81-84; Van Horn Depn. at 60-64, 68-69.)

54. By letter dated January 13, 1992 from Ms. Marshall to Mr. Wolfe, DBI submitted in response to the January 2 Letter, a

Supplemental Report (the "Second Supplemental Report") consisting of four pages of text, attached to which were Exhibit A (titled "New Hires at Stations WHOS/WDRM During 1982 - February 1989") and Exhibit B (a Statement dated January 13, 1992 signed by Mr. Bramlett (the "January 13 Response"). (Admissions Request, Attachment I.) The January 13 Response was prepared by Ms. Marshall based upon her review of DBI's previous filings, her understanding of the facts, and information supplied by Mr. Bramlett. (Marshall Depn. at 65-72.) The Second Supplemental Report in Exhibit A (a) set forth the number of minority and non-minority hires in each of 1982, 1983, 1984, 1985, 1986, 1987 and 1988, and in January and February 1989; (b) disclosed that there had been an additional 57 people during this period who worked at the Stations from one to 60 days "as talent only and who were not employees" under the Stations' policy; and (c) listed the recruitment sources relied upon during the License Period. The text of the Second Supplemental Report consists of a summary of the January 2 Letter followed by the following two paragraphs starting on page 2:

In response to the instant request, the licensee has again reviewed the stations' records. As a result of its review of the existing records, the licensee has determined that the information previously provided to the Commission was the best information the licensee was able to provide based on available documentation of recruitment efforts. The licensee has not, prior to the instant report, provided recruitment information which goes beyond that which could be verified from contemporaneous records maintained at the stations.

However, in view of the FCC's concern in its most recent letter that the stations had a greater number of new hires during the 1982 through February 1989 period than previously reported, the stations' staff has searched its collective memory and determined that 83 new hires, including the seven minority new hires described in the licensee's July 28 Report, rather than the 'approximate [sic] 20,' should have been reported. [Footnote 2 omitted.] It must be noted that the recruitment information for these additional new hires is based almost entirely on the collective memory of the staff. With the exception of some payroll lists, [footnote 3 omitted] no documentation exists to support the information provided about the additional new hires.^{13/}

Footnote 3 reads as follows:

The existence of payroll lists were discovered last week. The lists were discovered in a warehouse off-site, and, according to the staff, apparently had been stored there during a move of the stations' studios. The staff was unaware of the existence of these payroll lists and believed that they had been lost or destroyed during the move. Consequently, the staff had relied on the few records which remain on site at the stations to support their prior estimate that there were 'approximately 20' new hires. With the discovery of the warehoused lists, the staff can now more accurately determine the number of new hires. However, any information provided herein about the stations' efforts to recruit the additional new hires is based on the collective memory of the staff.^{14/}

The foregoing portions of the Second Supplemental Report were prepared by Ms. Marshall based upon and consistent with her

^{13/} These paragraphs were obviously written by Ms. Marshall between the time the Bramletts reported 17 new hires based on their recollection and the finding of the payroll records and were not revised in view of the time pressure to meet the January 13 extended filing date. (See Marshall Depn. at 71.)

^{14/} Footnote 3 was obviously added after the payroll records were found without conforming it with the text quoted above and discussed in Footnote 13, above.

understanding of the pertinent facts. She did not discuss with Mr. Bramlett what the "available documentation" referred to in the first paragraph of page 2 consisted of, nor did she discuss with Mr. Bramlett the explanation set forth in footnote 3.

(Marshall Depn. at 66-67, 76-77.)

55. Exhibit A of the Second Supplemental Report set forth, as noted, hiring information for each year from 1982 through 1988 and for the first two months of 1989. Exhibit A also provides the following information with respect to certain non-employee hires and recruitment:

During the period 1982 through 1988, WDRM/WHOS had a total of 57 people who worked from 1 day up to 60 days as talent only and were not employees of the stations, although a certain number of these were considered part-time employees at the time of the filing of the Annual Employment Reports. It is the policy of WHOS/WDRM that any hire does not become permanent until after 60 days.

During the term set out above, the recruitment sources relied upon were Calhoun College, Radio & Records, Huntsville Times, Decatur Daily, University of Alabama, A&M College, National Career College, local African-American leaders, Broadcasting Magazine, Manpower, Inc. and employee referrals.

The facts set forth in Exhibit A were provided by Mr. Bramlett. The last sentence of the first paragraph quoted above represented Ms. Marshall's understanding of the Stations' policy. Ms. Marshall did not herself consider or discuss with Mr. Bramlett the Commission's policy concerning whether or not an individual working at a broadcast station is considered an employee. No

breakdown was provided at the time of the filing of the January 13 Response as to the number of individuals within the 57 who were on probation versus those considered temporary. Exhibit A was prepared in a short period of time. The focus of both Ms. Marshall and Mr. Bramlett was to ensure that the facts set forth therein were as accurate as possible. (Marshall Depn. at 67-69.)

56. Ms. Marshall did not learn until after the HDO was released in the Fall of 1992 that Mr. Bramlett had been unaware until December 1991 that DBI had made any representations regarding the total number of hires during the License Period or that the FCC had asked for such information. (Id. at 64, 77-79.) Up until the Fall of 1992, it was her assumption that, until the discovery of the payroll records, DBI had intended to represent to the FCC that there had been approximately 20 hires during the License Period. (Id. at 77-79.)

57. On January 24, 1992, Ms. Cooper telephoned Ms. Marshall regarding the January 13 Response. This conversation was memorialized by a follow-up undated letter to Mr. Bramlett from Mr. Wolfe (the "January 24 Letter")^{15/} requesting in substance the following:

- (1) With respect to the 83 hires and the 57 "non-employees" listed in Exhibit A to the Second Supplemental Report, state whether the 57 non-employees (i) "are included in the 83 hires or whether they are in addition to the 83 hires" and (ii) explain what these

^{15/} A copy of the January 24 Letter is attached hereto as Exhibit 1.

individuals did at the Stations and why they were not considered employees;

- (2) Provide for all hires, regardless of the length of employment, the exact date of hire, the title, the 395-B classification, and full or part-time status of the position and the name, race, gender and date of termination of the hiree;
- (3) Explain the status in more detail of the 4 individuals originally listed in the Form 396 as hires during the Reporting Period but subsequently listed in the Opposition as non-employees.

58. By letter dated February 7, 1992, from Ms. Marshall to Mr. Wolfe, DBI submitted Supplementary Materials (the "Third Supplemental Report") in response to the January 24 Letter. (Admissions Request, Attachment J.) The Third Supplemental Report consisted of two pages of text, Exhibit 1 ("Explanation of 83 Hires 1982 - Feb. 1989 by Date") (two pages), Exhibit 2 ("Explanation of 57 Non-hires 1982 - Feb. 1989 by Date") (two pages) and Exhibit 3 (payroll records which document information provided in Exhibits 1 and 2) (303 pages). Exhibit 1 contained a list of the 83 employee new hires during the License Period, including the names of the hirees, their dates of hire, the titles of their positions, the FCC Form 395-B classification of their positions, the full or part-time status of their positions, the race and gender of the hirees and their dates of termination. Exhibit 2 contained a list of the 57 people who were hired during the License Period but who were not considered "employees" of the Stations, including their names, the dates of their hire, the titles of their positions, the FCC Form 395-B classification of

their positions, the full or part-time status of their position, the race and gender of the individuals and their dates of termination. The Third Supplemental Report also clarifies that the 57 "non-employees" are in addition to the 83 hires listed in Exhibit 1. The first two pages of text of the Third Supplemental Report were prepared by Susan Marshall. (Marshall Depn. at 72-73.) The lists included as Exhibits 1 and 2 were prepared by Mr. and Mrs. Bramlett, with the assistance of the computer expertise of the Stations' national sales manager, Mark Goodwin, and reviewed by Ms. Marshall. The payroll records attached as Exhibit 3, including handwritten payroll records for the period 1982 through 1987 and computer printouts for the year 1988, were provided by Mr. Bramlett. (M. Bramlett Depn. at 98; B. Bramlett Depn. at 21-22.)

59. The Third Supplemental Report provided the following explanation for the non-employee status of the 57 individuals listed in Exhibit 2:

These 57 individuals were not considered by the licensee to be employees of the Stations because either (a) they were hired as independent contractors on a purely temporary or fill-in basis and were not intended to work on a permanent basis, or (b) they were hired on a permanent basis, but were asked to leave their employment after a 60 to 90-day probationary period because they were found not to be qualified for the positions for which they were hired.

It was also noted that the four individuals hired during the Reporting Year but not counted as "employee" new hires on the

Form 396, as amended, were listed in Exhibit 2 and were hired on a temporary fill-in basis. (Admissions Request, Attachment J.)

60. Footnote 2 on page 1 of the text of the Third Supplemental Report notes, inter alia, that (a) there are some inconsistencies between the number of female new hires and the number of new hires in the Stations' upper level job positions as reflected in the Form 396 for the Reporting Year and as reflected in Exhibit 1 and (b) there are "slight inconsistencies" in the new hires in the License Period as reflected in the January 13 Response and in Exhibit 1. The footnote states that the inconsistencies discussed in clause (a) "are due to the fact that the members of the Stations' staff who prepared the renewal did not prepare the data as carefully as they should." With respect to clause (b), it is further explained that the staff members who prepared the January 13 Response did so based on a manual count of the payroll records. Exhibit 1 represents a computer-assisted compilation of these materials, generating a more accurate list of the new hires. The members of the Stations' staff referred to in this footnote include Mr. Bramlett. (Marshall Depn. at 73-74.) Exhibits 1 and 2 were derived from the handwritten payroll sheets and the 1988 computer print-out. (M. Bramlett Depn. at 96-98.)

61. By letter dated February 11, 1992, from Ms. Marshall to Mr. Wolfe, DBI submitted revised Exhibits 1 and 2 to the Third Supplemental Report (the "February 11 Response"). (Admissions Request, Attachment K.) The revised Exhibits corrected certain

typographical errors and provided additional explanatory information.

62. Mr. Bramlett's mindset throughout this process is evidenced by the following question and answer at his deposition (M. Bramlett Depn. at 129):

Q (Mr. Schattenfield) Okay. Once it became clear to you that they wanted all hires -- well, let me digress here a second. You have had my colleagues from the Mass Media Bureau focus you on the various letters that have been sent to Dixie concerning what information they wanted. Why, how could it not have been clear to you that they wanted total hires based on the various letters you got?

A Well, looking back on it, I can see where that could have been more clear, but even now I can -- I was focusing entirely on the fact that the NAACP basically accused me of being a racist and not hiring any -- had no EEO program and had no concern about hiring blacks. That continued to be my focus through the term, throughout the term of all of these filings from the beginning.

63. Mr. Bramlett was not aware of the extent of the mistake made by DBI until he read the HDO. In his words (Id. at 58-59):

... when I was designated for a hearing was when I put all of this stuff down, these letters, and said, "My God! What has happened?" I did not read that close enough, and I don't want you to think that I don't take the FCC serious. I do. I have been an engineer for 30 years, keeping meters within 2 percent, and worry about them at night if they are not, you know. So I am cognizant of the rules. I just felt safe under the umbrella of people that's smarter than me. And then when this thing comes to the end, I find out that we didn't do it right. And I read this and the other letters over and over at the designation or after August.

II. ARGUMENT

64. Based upon the foregoing recitation of facts, it is clear that the Misrepresentation Issue should be resolved in favor of DBI and that an appropriate sanction is warranted against DBI under the EEO Program Issue. As a bottom line, however, no hearing is necessary and the Renewal Applications should be granted.

A. The Misrepresentation Issue.

65. The impetus for the specification of the Misrepresentation Issue in the HDO was the fact that DBI represented under penalty of perjury on two separate occasions that the Stations had approximately 20 hires during the License Term when in fact, as was ultimately disclosed by DBI, there had been 104 hires during this period. HDO at paragraph 12. The Commission expressed its concern as follows:

While the accuracy of the contention that the stations had 20 hires during the license term was on its face dubious, the licensee and VP/GM, who had been in charge of the stations' EEO program throughout the entire license term, persisted in this contention when, in fact, there had been 104 hires. Because we must rely on truthful reporting by our licensees in assessing the success of an EEO program, we are particularly concerned when we find the actual number of hires is over five times greater than the number of hires repeatedly reported. Only after four inquiries did the licensee provide a reply that was seemingly accurate. Even that reply did not contain information regarding the

recruitment sources contacted, the interviewee pool composition of each position or the referral source of each hiree as previously requested.

Id.

66. A finding of misrepresentation or lack of candor requires a showing of a motive or intent to deceive. Fox River Broadcasting, 93 FCC 2d 127, 129 [1983] ("Fox River"); Century Cellunet of Jackson MSA Limited Partnership, 6 FCC Rcd 6150 [1991] ("Century Cellunet"); Barry Sidelsky, 7 FCC Rcd 1, 3 (Rev.Bd.1992) ("Sidelsky"); Safe Broadcasting, 6 FCC Rcd 6548, 6550 (Rev.Bd.1991); Montgomery County Media Network, 6 FCC Rcd 7440, 7445 (Rev.Bd.1991) ("MCMN"); Benko Broadcasting, 3 FCC Rcd 6838, 6841 (Chief, Video Svs.Div.1988) ("Benko"). Carelessness, mistakes, inattention to detail or exaggeration, without the necessary element of intent, do not constitute misrepresentation or lack of candor. Fox River, supra; Century Cellunet, supra; MCMN, supra; Benko, supra.

67. The record in this proceeding reflects carelessness, mistakes and inattention to detail, but there is absolutely no evidence of an intent to deceive or, indeed, of a motive to deceive. It is undisputed that (a) DBI incorrectly represented in the April 18 Response and in the October 15 Response that there were approximately 20 hires during the License Period and (b) the correct number of hires was 104. It is also uncontroverted that (c) this inaccuracy was not intentional, but was

the product of oversight, carelessness, and an honest misunderstanding; and (d) the inaccuracy was voluntarily disclosed.

68. The representation that there were approximately 20 hires during the License Period was first made in the Supplemental Report. This representation was added to the Supplemental Report by Ms. Marshall, DBI's attorney, with the intention of summarizing the facts set forth in a previous DBI filing. Ms. Marshall believed in good faith that the representation was accurate. At no time did Ms. Marshall discuss the representation with Mr. Bramlett or call it to his attention. She did not think there was a need to do so since, to her understanding, it merely repeated facts earlier verified. (Paragraphs 38-39, supra.)

69. While Mr. Bramlett did attest to the accuracy of the facts set forth in the Supplemental Report, he "totally missed" the misstatement concerning the number of hires in the License Period. Admittedly, a careful reading of the Supplemental Report would have revealed the inaccuracy. But Mr. Bramlett focused his attention on the accuracy of the new facts provided in pages 4 through 6 of the Supplemental Report and did not focus on the information on pages 2 and 3 of the Report which purported to summarize facts previously supplied in the Opposition. (Paragraphs 40-41, supra.) Mr. Bramlett did not realize the misstatement had been made.

70. The representation that there were approximately 20 new hires during the License Period occurred for the second and final

time in the October 10 Statement. In assessing whether an intentional misstatement was made at this juncture, it is important to bear in mind, as noted above, that Mr. Bramlett was unaware that any representation had been made in the Supplemental Report as to the total number of hires during the License Period.

71. The record reflects that Mr. Bramlett was called by Ms. Marshall on or about October 10, 1991, and understood he was being asked to explain why there was a variation in hiring rates between the 12 in the Reporting Year and eight in the multiple-month period thereafter.^{16/} Mr. Bramlett responded with his explanation as to turnover rate. At no time during this short conversation did Ms. Marshall mention the number 20 or discuss the total number of hires during the License Period. (Paragraph 42-43, supra.)

72. Mr. Bramlett concedes that a careful reading of the October 10 Statement would reveal that DBI had represented there had been approximately 20 hires during the License Period. Mr. Bramlett admittedly did not review the Statement carefully enough, however, and missed that point. Nor did he review the Statement with that focus in mind. His brief conversation with Ms. Marshall had consisted of one question and one answer concerning turnover rate and had nothing to do with the total number of hires during the License Period. He believed that the

^{16/} The March 15 Letter had requested information for the Reporting Year only. DBI had volunteered information with respect to the period subsequent thereto.